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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

CUNNINGHAM et al.

Art Unit: 1653

Serial Number: 09/701,395

Examiner: D. RAMIREZ

Filed: September 25, 2001

Attorney Docket No: 108172-00022

For: GENES OF CAROTENOID BIOSYNTHESIS AND METABOLISM
AND METHODS OF USE THEREOF

RESPONSE TO RESTRICTION REQUIREMENT

RECEIVED

MAR 27 2003

Commissioner for Patents
Washington, D.C. 20231

March 25, 2003

TECH CENTER 1600/2900

Sir:

The Office Action dated February 25, 2003 has been received and carefully noted.

The following remarks are submitted as a full and complete response thereto.

Applicants respectfully elect to prosecute the subject matter of Group I, depicted in claims 1-6, with traverse.

The Examiner is correct that the rules delegating this Restriction Requirement are subject to the PCT requirement of Unity of Invention. Thus, the Examiner is correct that restriction is proper as to claims 1-6 and 7-8, because the former set of claims is directed to nucleotide sequences, while the latter group of claims is directed to amino acid sequences. However, any further restriction of the claims based on the claimed nucleotide or amino acid sequences is improper. MPEP §1850 indicates that, with respect to nucleotide sequences, the Commissioner has waived certain requirements to permit


applicants to claim up to ten nucleotide sequences that do not have the same or corresponding special technical feature. Thus, applicants submit that the Examiner should have grouped Groups I-III and Groups IV-VI together.

Applicants respectfully request that the Examiner restate the Restriction Requirement to be limited to two groups, former Groups I-III and Groups IV-VI. In this regard, applicants elect former Groups I-III for prosecution, without traverse.

Applicants reserve the right to file a divisional application on the non-elected claims at any point prior to the termination of the proceedings in the subject application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 01-2300, referencing Attorney Docket No. 108172-00022.

Respectfully submitted,



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